

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-32 are presently active in this case, with Claims 6, 8, 14, and 18 amended to correct spelling and antecedent references, and Claims 28-32 added by way of the present amendment. Support for the amendment is found in the originally filed specification at least in Figure 2. Thus, no new matter is added.

In the outstanding Office Action, Claims 1-6, 10-12, 19, and 24-27 were rejected under 35 U.S.C. § 103(a) as unpatentable over Dudley et al. (U.S. Patent No. 5,754,754, hereafter "Dudley") in view of Wu et al. (U.S. Patent No. 5,754,754, hereafter "Wu") and Claims 7-9, 13-18, and 20 were objected to for being dependent upon a rejected base claim but were indicated as allowable if rewritten in independent form.

Applicant acknowledges with appreciation the indication of allowable subject matter.

Applicant and Applicant's representative greatly appreciate the courtesy of a personal interview with Examiner Chang on December 6, 2006. During the interview, differences between the present invention and the references in the outstanding Office Action were discussed. Comments discussed during the interview are reiterated below.

In response to the rejection of Claims 1-6, 10-12, 19, and 24-27 under 35 U.S.C. § 103(a), this rejection is respectfully traversed.

To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person.¹ The mere fact that references

¹ MPEP § 2142.

can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

It is respectfully submitted that there is no evidence in either Dudley or Wu suggesting the desirability of combining the ARQ (Automatic Repeat Request) protocol described in Dudley with the inventive BTTR (Burst Oriented Transport with Time-bound Retransmission) protocol described in Wu. Wu explains that a basic assumption of the ARQ (Automatic Repeat Request) is the Positive Acknowledgement (Positive ACK) method.² The Positive ACK method is described as having the transmitter based on the assumption that the packets the transmitter sent were not received if no acknowledgment is received after a timer has run out.³ Further, Wu teaches away from using the Positive ACK method stating that “Positive ACK is not practical for real-time communication in a noisy environment,”⁴ thereby stressing a method opposite to the Positive ACK method of the ARQ protocol.

To this end, Wu describes the Negative Acknowledgement (Negative ACK) method as one where a transmitter is identified to have successfully sent a data packet to the receiver if a negative acknowledgment is not received within a predetermined time period. Thus, there is no suggestion or motivation in Dudley and Wu to modify Dudley or to combine Dudley and Wu. Therefore, there is also no reasonable expectation of success when combining Dudley and Wu.

Accordingly, Applicants respectfully submit that independent Claims 1, 24, 25, 26, and 27 and the claims dependent therefrom are allowable. Therefore, it is respectfully requested that the rejection of Claims 1-6, 10-12, 19, and 24-27 under 35 U.S.C. §103(a) as unpatentable over Dudley in view of Wu be withdrawn.

² Wu, col. 5, lines 41-53.

³ Wu, col. 5, lines 51-53.

⁴ Wu, col. 5, lines 54-57.

Further, the proposed combination of Dudley and Wu would change the principle of operation of Dudley to use a basic principle of operation, Negative ACK, which is opposite the basic principle of operation, Positive ACK, which Dudley relies on. Accordingly, using the Negative ACK of Wu with the ARQ method described in Dudley would cause the method in Dudley to no longer be based on the ARQ method, thus changing Dudley's principle of operation. As such, the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, and thus, the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).⁵

Furthermore, the above arguments are especially pertinent with regards to dependent Claims 3, 4, and 10 because Claim 10 specifies the ARQ protocol and Claims 3 and 4 describe particular aspects of the Positive ACK method. Specifically, Claim 3 recites, in part, "deactivating said timer after a maximum duration, and then considering said packets associated with said bitmap block to be in said unacknowledged state" and Claim 4 recites, in part, "deactivating said timer when said transmitter receives a cumulated acknowledgement of said packets associated with said bitmap block, indicating that said packets associated with said bitmap block are in said acknowledged state."

Accordingly, Applicants respectfully submit that independent Claims 1, 24, 25, 26, and 27 and the claims dependent therefrom are allowable for this additional reason. Therefore, it is respectfully requested that the rejection of Claims 1-6, 10-12, 19, and 24-27 under 35 U.S.C. §103(a) as unpatentable over Dudley in view of Wu be withdrawn.

Additionally, with respect to rejected Claims 11, 12, and 19, these claims recite "associating a time stamp with at least some packets in said unacknowledged state" or "a time stamp associated with at least some packets in said unacknowledged state." Neither

⁵ MPEP § 2143.01 VI.

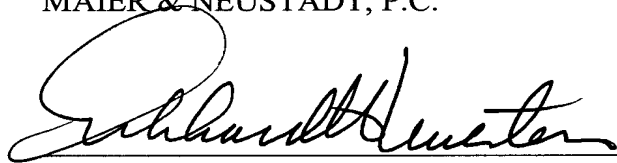
Dudley nor Wu describe the claimed "time stamp." Rather, Dudley and Wu discuss the use of timers in general. However, a timer is not a "time stamp" as recited in Claims 11, 12, and 19.

Accordingly, Applicants respectfully submit that independent Claims 11, 12, and 19 are patentable for this additional reason.

Consequently, in view of the foregoing discussion and present amendment, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Eckhard H. Kuesters", written over a horizontal line.

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